

CHIROPRACTIC EXAMINING BOARD

Minutes

November 11, 2004

- PRESENT:** Steven Conway, Susan Feith, Wendy Henrichs, James Rosemeyer, James Weber, Steven Silverman (Observed)
- EXCUSED:** Char Glocke
- STAFF PRESENT:** Tom Ryan, Bureau Director of Health Professions; Dennis Schuh; Legal Counsel, Gina York, Bureau Assistant, and Division of Enforcement and other staff
- GUESTS:** Nicole Boryczka, WPTA; Wendy Kammerud, WCA

CALL TO ORDER

James Rosemeyer, Chair, called the meeting to order at 8:01 a.m. A quorum of 5 members was present. The Board welcomed new member Dr. Steven Silverman who will observe today's meeting.

APPROVAL OF AGENDA

Additions to the Agenda:

- Open Session: After Preceptor Approval Requests – Add Board Review and Discussion Regarding Cold Laser and Discussion Regarding Online Continuing Education
- Open Session: After Item G. – Correspondence from LaRowe, Gerlach, & Roy, S.C. Regarding Nuga Best Healthway Activator
- Closed Session: After Monitoring Received After the Mailing of the Agenda – Status of Harold Dykema
- Closed Session: After Deliberation of Proposed Administrative Warnings Received After the Mailing of the Agenda – Add Case # 01 CHI 029

MOTION: Steven Conway moved, seconded by James Weber, to approve the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF SEPTEMBER 9, 2004

Amendments to the Minutes:

None.

MOTION: Susan Feith moved, seconded by Steven Conway, to approve the September 9, 2004 minutes as written. Motion carried unanimously.

PRESENTATION OF PROPOSED STIPULATIONS

None.

PRESENTATION OF PROPOSED STIPULATIONS SIGNED AFTER THE MAILING OF AGENDA

None.

ADMINISTRATIVE REPORT

Tom Ryan had nothing to report to the Board at this time.

APPROVAL OF 2005 MEETING DATES

MOTION: James Weber moved, seconded by Steven Conway, to approve the 2005 meeting dates with a request to change the October 27, 2005 meeting to November 17, 2005. Motion carried unanimously.

SUMMARY REPORTS ON PENDING COURT CASES, DISCIPLINARY CASES AND ADMINISTRATIVE RULES AND PRESS RELEASES

Dennis Schuh reviewed the summary reports with the Board at today's meeting.

DISCUSSION AND REVIEW OF INFORMATION REGARDING CLIENT INQUIRY

This was a question submitted by Dennis Schuh, Legal Counsel, regarding whether a certified athletic trainer could be delegated rehabilitation exercises and passive modalities without taking other courses. Attorney Schuh wanted to receive input by the Board on this issue and will respond on behalf of the Board. This type of question comes up often and he would like the Board to provide some guidance on responding to these types of questions surrounding delegation.

MOTION: Wendy Henrichs moved, seconded by Steven Conway, to delegate James Weber as the Board liaison for determining delegation qualifications for anyone assisting a chiropractor. Motion carried unanimously.

STATUS OF RULES PERTAINING TO QUALIFICATIONS FOR INSTRUCTORS

The Board discussed this topic at length and the rules pertaining to qualifications for instructors. Susan Feith reviewed the materials submitted with the Board at today's meeting. She shared there were some differences of opinion with the former Legal Counsel, Jacquelyn Rothstein on this issue. The Board discussed the materials, reviewed current existing language, and explored options with Dennis Schuh, the newly assigned Legal Counsel to the Chiropractic Examining Board. After this discussion, the Board decided to reanalyze the information gathered and to continue to work on proposed language for the qualifications for instructors. Therefore, Attorney Schuh will gather additional information and provide recommendations at the next Board meeting. He will ensure there is not a duplication of rules and will identify what specifically needs to be included in the language to clarify this issue.

MOTION: Susan Feith moved, seconded by James Weber, to appoint Wendy Henrichs, Steven Conway, and Susan Feith to work with Legal Counsel on the continued formation of the qualifications for instructors. Motion carried unanimously.

DISCUSSION REGARDING ESTABLISHMENT OF PROCEDURE FOR HANDLING OF PRECEPTORSHIP APPLICATIONS

This topic was postponed for discussion at today's meeting by Dennis Schuh, Legal Counsel, and Julie Reimann, Credentialing.

PRECEPTOR APPROVALS

The Board reviewed the list of preceptors provided by Julie Reimann, Credentialing, for the Board's approval. The list included the following individuals: Erik Toijala, Dale Strama, Michael Headlee, and Larry Smithers.

MOTION: Steven Conway moved, seconded by Wendy Henrichs, to approve the preceptors presented at the November 11, 2004 meeting. Motion carried unanimously.

PRECEPTOR APPROVAL FOR REQUESTS RECEIVED AFTER THE PRINTING OF THE AGENDA

None.

BOARD REVIEW AND DISCUSSION REGARDING COLD LASER

Chair Rosemeyer provided a brief review of past discussions of the Board. He clarified that today's goal was to finish any further discussion, share concerns, and make a decision as to what direction the Board wishes to go in the future. Steven Conway did not participate in this discussion or any past discussions on the cold laser issue. After some additional conversations among the Board, it took the following action.

MOTION: James Weber moved, seconded by Wendy Henrichs, to request a scope statement be prepared regarding CE requirements for cold laser. Steven Conway – Abstained. Motion carried.

DISCUSSION REGARDING ONLINE CONTINUING EDUCATION

The Board shared that there was a scope statement done in 2001 regarding online continuing education. Dr. Weber met with Northwestern College and together they reviewed the concerns expressed by WCA's in their letter. Northwestern's online courses require that an individual must have an assigned log-on number to actually take the course and welcome input on such courses. Northwestern has exams for their courses and there is a requirement of 75% to pass. Instructors are required to reply within 24 hours to questions submitted by their students.

Dr. Rosemeyer met with Palmer College regarding their online courses and it was shared they work through e-college. These courses have a timing device, log-on ID, and all courses have tests included with each of them. Palmer College prefers not to give partial credits and wants to ensure security of their courses. Dr. Rosemeyer also had a conversation with WCA and discussed things they wanted and shared their concerns with him such as the lack of interaction with chiropractors, video streaming, and to review of all courses.

The Board consulted with Dennis Schuh, Legal Counsel, on what other states were doing in this area and language they currently have on this subject matter. Attorney Schuh stated that Minnesota's language is pretty generic in this area. He shared he would look more in-depth into this area while gather information for making recommendations regarding criteria for qualified instructors.

MOTION: James Weber moved, seconded by Susan Feith, to request Kimberly Nania invite Northwestern and Palmer Colleges to do a presentation of their courses and provide a question and answer session at the February 2005 meeting. Steven Conway – Abstained. Motion carried.

CORRESPONDENCE FROM WCA REGARDING COLD LASER THERAPY

The Board reviewed the correspondence from the Wisconsin Chiropractic Association regarding cold laser. Dennis Schuh, Legal Counsel, will respond on behalf of the Board as indicated at today's meeting.

CORRESPONDENCE FOR LAROWE, GERLACH, & ROY, S.C. REGARDING NUGA BEST HEALTHWAY ACTIVATOR

The Board reviewed the correspondence from LaRowe, Gerlach, & Roy, S.C. regarding the Nuga Best Healthway Activator. Dennis Schuh, Legal Counsel, will respond on behalf of the Board as indicated at today's meeting.

CORRESPONDENCE AND PHONE INQUIRIES BY LEGAL COUNSEL

Dennis Schuh, Legal Counsel, will respond to all inquiries on behalf of the Board.

DOE TO ADDRESS BOARDS CONCERNS ERIC CALISTO

The Board requested DOE to attend today's meeting in order to address specific concerns surrounding their caseload. Eric Callisto, Division of Enforcement Administrator, discussed concerns expressed by the Chiropractic Examining Board on the handling of their cases, lack of consultation with case advisors, and staff ignoring recommendations of case advisors when made. The Board expressed that there are cases on the summary report that are long overdue and there has been no movement shown on them.

Mr. Callisto shared with the Board that he has encouraged DOE Staff to contact and consult with case advisors to come up with a fair and just resolution to the case. He shared that in the future, when there is a disagreement and a resolution cannot be reached, the case will come before the Board for a recommendation. As far as overdue cases, there has now been a deadline set to clean up caseloads and there has been a new standard set ranking cases by priority. By December 2004, all pending cases from 2001 will be resolved. Currently the Chiropractic Examining Board has fifty-three (53) cases. There are as follows:

6 cases are 2001 cases, which will be resolved by December 2004

6 cases are high Priority III cases

14 cases are lower Priority I cases

12 cases are 2002 cases target resolution date by middle of next year.

5 cases are various cases received after 2002

Mr. Callisto will review and provided recommendations for closure on all appropriate cases and will keep the Board abreast of any future developments that may impact on the handling of the Board's cases.

INFORMATIONAL ITEMS

Noted.

VISITOR COMMENTS

None.

CONVENE TO CLOSED SESSION

MOTION: Steven Conway moved, seconded by James Weber, to adjourn to closed session pursuant to Wisconsin state statutes 19.85(1)(a)(b)(f) and (g) to consult with Legal Counsel regarding the Suit by WCA, deliberate on proposed stipulations, deliberate on proposed administrative warnings, deliberate on monitoring issues, application review, monitoring report and DOE case status reports. Motion carried by roll call vote: Steven Conway-yes; Susan Feith-yes; Wendy Henrichs-yes; James Weber-yes; and James Rosemeyer-yes.

Open Session recessed at 10:46 a.m.

RECONVENE TO OPEN SESSION

MOTION: James Weber moved, seconded by Wendy Henrichs, to reconvene into open session at 12:04 p.m. Motion carried unanimously.

VOTING ON ITEMS CONSIDERED OR DELIBERATED ON IN CLOSED SESSION

MONITORING RECEIVED AFTER MAILING OF AGENDA

HAROLD DYKEMA

MOTION: Wendy Henrichs moved, seconded by Steven Conway, to deny the request for a limited license to Harold Dykema. Abstained – James Weber. Motion carried.

APPLICATION REVIEWS BY ENDORSEMENT

CHRISTOPHER J. FOLEY, DC

MOTION: Wendy Henrichs moved, seconded by Susan Feith, to approve the application by endorsement regarding Christopher J. Foley, D.C. upon a satisfactory response to credentialing regarding question 2 on page 3 of 5 of application. Motion carried unanimously.

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APPLICATION REVIEWS

PHILIP W. GROVER, DC

MOTION: James Weber moved, seconded by Susan Feith, to approve the application for licensure regarding Phillip W. Grover, D.C. Motion carried unanimously.

APPLICATIONS RECEIVED AFTER THE MAILING OF THE AGENDA

None.

**DELIBERATION OF PROPOSED STIPULATIONS SIGNED AFTER
MAILING OF THE AGENDA**

None.

PROPOSED DECISIONS AND ORDERS FIXING COSTS

WARREN A. WITKOWSKI, (LS 0207231 CHI)

MOTION: Steven Conway moved, seconded by Wendy Henrichs, to approve the order fixing costs regarding Warren A. Witkowski, D.C. Motion carried unanimously.

**DELIBERATION OF PROPOSED ADMINISTRATIVE WARNINGS RECEIVED
AFTER MAILING OF AGENDA**

CASE J.F. 01 CHI 029

MOTION: James Weber moved, seconded by Steven Conway, to issue an administrative warning regarding Case # 01 CHI 029. Motion carried unanimously.

DIVISION OF ENFORCEMENT CASE STATUS REPORT

MOTION: James Weber moved, seconded by Susan Feith, to close case **01 CHI 057** for prosecutorial discretion. Abstained - Steven Conway. Motion carried.

MOTION: Steven Conway moved, seconded by Wendy Henrichs, to close case **04 CHI 028** for insufficient evidence. Motion carried unanimously.

MOTION: Wendy Henrichs moved, seconded by Steven Conway, to close case **04 CHI 016** for no violation. Motion carried unanimously.

OTHER DOE CASES SUBMITTED AFTER THE MAILING OF THE AGENDA

None.

OTHER BOARD BUSINESS

ADJOURNMENT

MOTION: Wendy Henrichs moved, seconded by Steven Conway, to adjourn the meeting at 12:06 p.m. Motion carried unanimously.

**NEXT MEETING WILL BE
FEBRUARY 24, 2005**